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Attorneys for Nominal Defendant
Leap Wireless International, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHARLES GRAHAM, Derivatively on
Behalf of Nominal Defendant LEAP
WIRELESS INTERNATIONAL, INC.,

Plaintiff,

v.

S. DOUGLAS HUTCHESON, AMIN
KHALIFA, GRANT BURTON, DEAN M.
LUVISA, MICHAEL B. TARGOFF, JOHN
D. HARKEY, JR., ROBERT V. LAPENTA,
MARK H. RACHESKY, M.D., and JAMES
D. DONDERO,

Defendants,

and

LEAP WIRELESS INTERNATIONAL,
INC.,

Nominal Defendant.

CASE NO. 08-CV-0246 L NLS

(Derivative Action)

NOMINAL DEFENDANT LEAP WIRELESS
INTERNATIONAL, INC.'S
NOTICE OF RELATED CASES

Judge: The Hon. M. James Lorenz
Courtroom: 14

I. Notice of Related Cases

Pursuant to Civil Rule 40.1(e), Nominal Defendant Leap Wireless International, Inc. ("Leap") hereby gives notice to the Court and all interested parties that the above captioned derivative case is related to: (1) pending consolidated federal securities cases, (2) a pending state derivative case, and (3) dismissed federal and state cases.

A. Related Federal Cases

This case, *Charles Graham, Derivatively on Behalf of Nominal Defendant Leap Wireless International, Inc. v. S. Douglas Hutcheson, Amin Khalifa, Grant Burton, Dean M. Luvisa, Michael B. Targoff, John D. Harkey, Jr., Robert V. LaPenta, Mark H. Rachesky, M.D., and James D. Dondero*, filed February 7, 2008 (hereinafter the "*Leap Derivative Litigation*"), is related to the following consolidated securities class action cases pending in this district before the Honorable Barry T. Moskowitz: *HCL Partners Limited Partnership v. Leap Wireless International, Inc., S. Douglas Hutcheson, Dean M. Luvisa, Amin I. Khalifa, and PriceWaterhouseCoopers LLP*, Lead Case No. 07cv2245 BTM (NLS), filed November 27, 2007, and *Kent Carmichael v. Leap Wireless International, Inc., S. Douglas Hutcheson, Mark H. Rachesky, Amin I. Khalifa and Dean M. Luvisa*, Case No. 08cv128 (hereinafter collectively the "*Leap Securities Litigation*").

Pursuant to Civil Rule 40.1(f), an action or proceeding is related to another action or proceeding where both of them: (1) involve some of the same parties and are based on the same or similar claims; or (2) involve the same property, transaction, or event; or (3) involve substantially the same facts and the same questions of law. The *Leap Derivative Litigation* and the *Leap Securities Litigation* meet these criteria.

First, both the *Leap Derivative Litigation* and the *Leap Securities Litigation* involve substantially overlapping parties—both name Leap and several of its current and former officers and directors, including S. Douglas Hutcheson, Dean M. Luvisa, Amin Khalifa, and Mark Rachesky.

Second, both the *Leap Derivative Litigation* and the *Leap Securities Litigation* involve the same or similar claims. Both cases allege violations of Section 10(b) and Rule 10b-5

1 of the Securities and Exchange Act during the same alleged period based on the same series of
 2 public disclosures regarding Leap's restatement of financial statements, and the sales of Leap
 3 stock by certain defendants on the same alleged non-public information.

4 Third, both the *Leap Derivative Litigation* and the *Leap Securities Litigation* stem
 5 from and relate to the same events—Leap's financial restatement announced in November 2007,
 6 and allegations of the defendants' knowledge regarding the accounting errors and alleged
 7 deficiencies in internal controls in the four years prior to such announcement. The operative
 8 complaints rely on and quote at length from Leap's press release announcing the restatement and
 9 the same Leap filings with the Securities and Exchange Commission. Moreover, both cases deal
 10 with the same questions of law.

11 Accordingly, and in order to avoid unnecessary duplication of judicial effort, the
 12 related *Leap Derivative Litigation* and the *Leap Securities Litigation* should both be assigned to
 13 the same judge. In this case, the Honorable Barry T. Moskowitz is the low-number judge. Judge
 14 Moskowitz has recently ruled on motions to consolidate the *Leap Securities Litigation* and to
 15 appoint lead counsel and a lead plaintiff. Accordingly, Leap respectfully requests that the *Leap*
 16 *Derivative Litigation* be transferred to the Honorable Barry T. Moskowitz.

17 **B. Related State Cases**

18 Pursuant to Civil Rule 40.1(e), Leap also gives notice that the *Leap Derivative*
 19 *Litigation* pending in this Court is also related to *In re Leap Wireless International, Inc.*
 20 *Shareholder Derivative Litigation*, Lead Case No. 37-2007-00081584-CU-MC-CTL, filed on
 21 November 13, 2007 and pending in the Superior Court of the State of California, County of San
 22 Diego, before the Honorable John S. Meyer.

23 **C. Related Dismissed Cases**

24 The *Leap Derivative Litigation* is also related to the following two federal
 25 securities class actions that were dismissed and the following state derivative action that was
 26 dismissed:

27 ///

28 ///

1 ▪ *Frank Charek v. Leap Wireless International, Inc., et al.*, United States
2 District Court for the Southern District of California, Case No. 07CV2256DMS(CAB), filed
3 November 28, 2007 and subsequently dismissed.

4 ▪ *Devay Campbell v. Leap Wireless International, Inc., et al.*, United States
5 District Court for the Southern District of California, Case No. 07CV2297BTM(NLS), filed
6 December 7, 2007 and subsequently dismissed.

7 ▪ *Charles Graham, Derivatively on Behalf of Nominal Defendant Leap*
8 *Wireless International, Inc. v. S. Douglas Hutcheson, et al.*, Superior Court of California for the
9 County of San Diego Case No. 37-2008-00075341-CU-MC-CTL, filed on January 9, 2008 and
10 subsequently dismissed. Derivative plaintiff Graham refiled his action in this Court on February
11 7, 2008 and it is the *Leap Derivative Litigation*.

12 **II. Low-Number Rule Transfer**

13 For the foregoing reasons, Leap requests that under Civil Rule 40.1(d), this *Leap*
14 *Derivative Litigation* be transferred to the Honorable Barry T. Moskowitz, the low-number judge
15 assigned to the related *Leap Securities Litigation*.

16 Dated: May 30, 2008

Respectfully submitted,

17 LATHAM & WATKINS LLP
18 Miles N. Ruthberg
19 Pamela S. Palmer
20 Kimberly Arouh Hicks
Jake Ryan
Curtis Carll
Daniel K. Greene

22 By s/ Kimberly Arouh Hicks
23 Kimberly Arouh Hicks
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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 600 West Broadway, Suite 1800, San Diego, CA 92101-3375.

On May 30, 2008, I served the following document described as:

**NOMINAL DEFENDANT LEAP WIRELESS INTERNATIONAL, INC.'S
NOTICE OF RELATED CASES**

by serving a true copy of the above-described document in the following manner:


BY ELECTRONIC FILING

I am familiar with the United States District Court, Southern District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the court. The court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities. Under said practice, the following CM/ECF users were served:

Edward M. Gergosian, Esq.
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San Diego, CA 92101
ed@gergosian.com
Attorneys for Plaintiff

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 30, 2008, at San Diego, California.



Andrea Rasco